Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1995

RICHARD A. SCHALL,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

Petitioner for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

Richard A. Schall
Pro Se
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446
(301) 869-2058

May 28, 1996

Balmar Legal Publishing Department Services, Washington, D.C. (202) 682-9800

QUESTION PRESENTED

1. My question is exactly when did I become a postal service employee without rights? In 1992, RIF actions were directed at my position. Therefore, I am requesting clarification of the applicable RIF procedures at that time. It is my position that the USPS did not act properly in its hurry to restructure.

2. In brief, the key question is what RIF rights did I have in 1992 as a federal civil servant and career postal employee in good standing? MSPB may not have had jurisdiction. However, I contend that I certainly did have RIF rights, particularly dealing with "promotion and placement" procedures. Regretfully, improper promotion and placement procedures were the norm not the exception, thus many careers were negatively impacted including mine.

I.
Statement of the Case

This petition seeks review of the judgment of the United States Court of Appeals for the Federal Circuit in it's adverse decision regarding Richard A. Schall, United States Postal Service, career civil service appointee August 17, 1974.

On January 3, 1996, the Federal Appeals court decided (*Schall v. USPS* 94-3644) that United States Postal Service career employees who are not preference eligible "cannot" appeal reduction-in-force (RIF) actions to the Merit Systems Protection Board (MSPB).

II.
Importance of the Issues

Postal Service cutback is a RIF and preference eligible Postal Service employees have RIF appeal rights. As stated in my March 21, 1996 letter (Petition for Writ of Certiorari):

The primary issues are: do I as a "Nonpreference Eligible Postal Service Employee" have any "RIF Appeal Rights?" In conjunction with the appeal rights issue, did I have any "other" rights in 1992 as a career postal employee under the FPM Supplement 351-1. These rights included but were not limited to: Assignment Rights, Promotion and Retention Factors, Employee Placement Assistance Programs, and Voluntary Early Retirement.

In summary, my question is exactly when did I become a postal employee without rights? In 1992, RIF actions were directed at my position. Therefore, I am requesting clarification of the applicable RIF procedures at that time. It is my position that the USPS did not act properly in its hurry to restructure. In brief, the key question is what RIF rights did I have in 1992 as a federal civil servant and career postal employee in good standing? MSPB may not have had jurisdiction. However, I contend that I certainly did have RIF rights, particularly dealing

with "promotion and placement" procedures. Regretfully, improper promotion and placement procedures were the norm not the exception, thus many careers were negatively impacted including mine.

III.
Conclusion

I am respectfully requesting that all, non-veteran Federal Postal Service (career status) employees be given the same RIF appeal rights and protections as veteran/preference eligible Postal Service Employees including promotion and placement procedures. In brief, there were "transition centers" and almost "three-thousand demotions" of Executive Action Series (EAS) Management personnel, because proper and legitimate RIF procedures were not followed by the USPS.

In summary, the reality is that non-veterans can appeal to federal courts including the "Supreme Court of the United States." However, without a favorable court decision, non-veterans will continue to be treated as second class citizens by the the very government that reaps the benefits of their unique skills, abilities, talents and, most importantly, "loyalty."

Respectfully Submitted,

Richard A. Schall
Pro Se
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446
(301) 869-2058

May 28, 1996

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RICHARD A. SCHALL,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent,

and

MERIT SYSTEMS PROTECTION BOARD,

Intervenor.

94-3644

Richard A. Schall, of Gaithersburg, Maryland, submitted Pro Se.

Thomas P. McLish, Department of Justice, of Washington, D.C., submitted for respondent. *Frank W. Hunger*, Assistant Attorney General and *David M. Cohen*, Director, Department of Justice, of Washington, D.C., were on the brief for respondent.

Mary L. Jennings, Acting General Counsel, *David C. Kane*, Assistant General Counsel and *Calvin M. Morrow*, Attorney, of Washington, D.C., were on the brief for the intervenor, Merit Systems Protection Board.

Appealed from: Merit Systems Protection Board

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

RICHARD A. SCHALL,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent,

and

MERIT SYSTEMS PROTECTION BOARD,

Intervenor.

94-3644
DECIDED: January 3, 1996

Before MAYER, *Circuit Judge,* FRIEDMAN, *Senior Circuit Judge*, and BRYSON, *Circuit Judge*

PER CURIAM.

Richard A. Schall petitions for review of a final decision of the Merit Systems Protection Board which dismissed his appeal for lack of jurisdiction. *Bergon v. United States Postal Serv.*, 64 M.S.P.R. 228 (1994). We affirm.

Background

Schall was employed by the United States Postal Service as a Master Instructor, EAS-25, until he was reassigned to the position of Operations Quality Improvement Specialist, EAS-21, during an agency-wide reorganization in 1992 and 1993. On

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[1] The board stated that Schall made only a bald allegation that he was a preference eligible employee and had thus failed to make a nonfrivolous allegation entitling him to further proceedings on that issue. 64 M.S.P.R. at 231 n.5. He now admits that he is not entitled to preference eligible status.

August 24, 1993, Schall appealed to the board alleging that he was demoted under duress, that the agency violated reduction-in -force (RIF) regulations. and that the agency improperly denied him a promotion. In her acknowledgement order, the administrative judge told Schall that only postal employees eligible for a veteran's preference could appeal RIF actions, and ordered him to file evidence and argument to establish that he was preference eligible. Schall presented no evidence on the issue, and after considering the agency record the administrative judge ruled that he was not a preference eligible employee. *Schall v. United States Postal Serv.*, No. 0351-93-0694-I-1, slip op. at 2 (Oct. 5, 1993) (initial decision). She held that the board had no jurisdiction over an appeal of a RIF action by a nonpreference eligible postal employee or over an appeal of denial of a promotion. *Id.* She dismissed the appeal because it did not raise nonfrivolous issues of fact which could establish the board's jurisdiction. *Id.*

Schall petitioned for review of the finding that he was not a preference eligible employee and the holding that he was not entitled to appeal from the agency's RIF action. The board consolidated his petition with twenty-four similar ones from postal employees who were also affected by the 1992-1993 reorganization. In a final decision styled *Bergon v. United States Postal Service,* 64 M.S.P.R. 228, the board reaffirmed its earlier decision in *Marcoux v. United States Postal Service*, 63 M.S.P.R. 373 (1994), that an agency action taken pursuant to a RIF is necessarily excluded from the definition of adverse actions over which the board has jurisdiction. The board thus held that it "lacked jurisdiction over the appeal of a nonpreference eligible employee who was assigned to a different position as a result of the agency's RIF." 64 M.S.P.R. at 231. Because none of the twenty-five *Bergon* appellants was a preference eligible employee[1] and the agency action which affected each of them was taken pursuant to the RIF, the board dismissed the petitions for lack of jurisdiction. *Id.* at 232. Schall appeals.

Discussion

I.

Before addressing the merits, we dispose of the board's intervention to recaption this case. The board argues that it, not the agency, is the proper respondent because *Bergon* addressed only the board's jurisdiction. The Postal Service counters that it is properly the respondent because the board addressed an issue on the merits in reaching the determination that no jurisdiction existed over Schall's claims. We agree with the agency.

The "caption issue" -- whether the board or an agency is the proper respondent to a petition for judicial review of a board decision -- has been the subject of considerable debate, but is now resolved. *See Spruill v. Merit Sys. Protection Bd.*, 978 F.2d 679., 682-84 (Fed. Cir. 1992); *Amin v. Merit Sys. Protection Bd.*, 951 F.2d 1247, 1249-51 (Fed. Cir. 1991). Ensuring that the correct party is the respondent to a petition for review is not just a procedural technicality. Having the proper respondent, and thus the proper caption, "determines which agency and whose lawyers -- and therefore whose policy and practices -- are represented in the appeal." *Spruill*, 978 F.2d at 683. It is now beyond question that "[i]f the issue on appeal is solely one of the procedure or jurisdiction of the MSPB, then the proper respondent is the MSPB. If the issue is solely the merits of the underlying agency action, the agency is the proper respondent. If the case raises a mixture of these issues, i.e., if the merits of the agency action are reached by the MSPB, and at the same time a matter of important MSPB procedure or jurisdiction is involved, *Amin* teaches that the employing agency is the proper respondent." *Id.* at 686. This statement of the law is not seriously disputed, but the parties argue over its application when

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[2] All citations are to the 1988 edition of the U.S. Code.

an appeal involves facts common to both a jurisdictional determination and the merits. *Cf. id.* at 688.

The board maintains that "[i]n *Bergon*, the Board's jurisdictional dismissal was based solely on its finding that the appellants were affected by reduction-in-force actions but that they were not the type of employee (preference eligible) who had a right to appeal RIF actions to the Board." The board further claims to have nowhere addressed an issue that goes to the merits of a RIF action such as "whether the Postal Service properly established competitive areas or levels or correctly determined the petitioners' RIF retention rights." Therefore it says it acted merely to enforce its limited jurisdiction over only those actions which are specified by law, rule, or regulation, and is the proper respondent to Schall's petition.

The board's argument overlooks that it addressed the most fundamental merits issue: Whether the agency actions against the individual appellants were taken pursuant to a RIF. Although prior to *Bergon*, the board for all intents and purposes had determined that the agency had conducted a RIF in 1992 and 1993, *see e.g., Robinson v. United States Postal Service*, 63 M.S.P.R. 307 (1994); *Brown v. United States Postal Service*, 58 M.S.P.R. 345 (1993), it had not addressed whether the specific actions against Schall and the others were taken pursuant to that RIF. That is important because if the agency actions were actually adverse actions directed at the individual appellants, rather than RIF actions, then some of them may have been able to appeal even though they were not preference eligible postal employees. *See* 39 U.S.C. § 1005(a).[2] If the board correctly

[3] 5 U.S.C. § 7511(a)(1)(B) provides that an "employee" who is entitled to appeal the adverse actions covered by Subchapter II of Chapter 75, *see* 5 U.S.C. § 7512, includes "a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions - . . . (ii) in the United States Postal Service or the Postal Rate Commission." *See generally* 5 U.S.C. §§ 7511-14 (Subchapter II of Chapter 75).

determined that the *Bergon* appellants were affected by agency RIF actions and that none of them were preference eligible postal employees, it follows that it did not have jurisdiction to hear their appeals. When, as here, the board makes a finding on a merits issue en route to an ultimate determination that it is without jurisdiction to hear an appeal, it is the agency whose conduct is at issue and the agency *always* must be allowed to defend its actions as the respondent to a petition for review in this court. In *Bergon*, board addressed a merits issue when it determined that the appellants were affected by a RIF action. Therefore we proceed with the Postal Service as respondent.

All citations are to the 1988 edition of the U.S. Code.

II.

Having abandoned his claim to preference eligibility, Schall now argues that career postal employees should be allowed to appeal the agency's RIF actions regardless of their status as nonpreference eligible employees. But that is an argument best addressed to Congress.

The Postal Service is "an independent establishment of the executive branch of the Government of the United States," 39 U.S.C. § 201, and its employees are generally not entitled to civil service protection, 5 U.S.C. § 2105(e). Therefore, Schall must point to some law, rule, or regulation that gives him a right to appeal the agency's action or the board has no jurisdiction. *See* 5 U.S.C. § 7701(a); *Van Werry v. Merit Sys. Protection Bd.*, 995 F.2d 1048, 1050 (Fed. Cir. 1993).

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[4] 39 U.S.C. § 1005(a)(4)(A)(ii) extends the rights of Subchapter II of Chapter 75 of Title 5 "to any other individual who - (I) is in the position of a supervisor or a management employee in the Postal Service. or is an employee of the Postal Service engaged in personnel work in other than a purely nonconfidential clerical capacity; and (II) has completed 1 year of current continuous service in the same or similar positions."

Specific categories of postal employees do have limited rights under Title 5. The Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, gave preference eligible postal employees the right to appeal adverse actions as provided by Title 5, Subchapter II of Chapter 75.[3] Nine years later, Congress also amended 39 U.S.C. § 1005(a), and gave nonpreference eligible supervisory and managerial employees a limited right to appeal adverse actions. Postal Employee Appeal Rights Act of 1987, Pub. L. No. 100-90, § 1 (a), 101 Stat. 673.[4] Even if shall fits under this statute, whoever, he still has no right to appeal because a RIF action is not an adverse action initiated against a particular employee due to his conduct or performance, but an action directed at the employee's position. "A RIF is an administrative procedure by which agencies eliminate jobs and account for employees who occupied abolished positions." *Huber v. Merit Sys. Protection Bd.*, 793 F.2d 284, 286 (Fed. Cir. 1986). Congress having explicitly excluded RIFs from those adverse actions covered by Subchapter II of Chapter 75, Schall cannot appeal the agency's RIF action as if it were an adverse action. 5 U.S.C. § 7512(B); *see also* 5 C.F.R. § 752.401(b)(3).

Conclusion

Accordingly, the decision of the Merit Systems Protection Board is affirmed.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

94-3644

RICHARD A. SCHALL,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent,

and

MERIT SYSTEMS PROTECTION BOARD,

Intervenor.

Judgement

ON APPEAL from the MERIT SYSTEMS PROTECTION BOARD

in CASE NO(S). DC0351930694-I-1

This CAUSE having been heard and considered, it is ORDERED and ADJUDGED:

AFFIRMED

ENTERED BY ORDER
OF THE COURT

/s/ Frances X. Gindhart
Francis X. Gindhart, Clerk

DATED Jan - 3 1996
Issued As A Mandate: February 26, 1996

Mary S. Elcano
Senior Vice President, General Counsel
United States Postal Service

UNITED STATES
POSTAL SERVICE

January 16, 1996

OFFICERS

SUBJECT: Nonpreference eligible postal service Employees Have No RIF Appeal Rights

On January 3, 1996, a federal appeals court decided that Postal Service employees who are not preference eligibles cannot appeal reduction-in-force ("RIF") actions to the Merit Systems Protection Board ("MSPB" or "Board").

Prior to the 1992 restructuring, the petitioner in this case, Richard A. Schall, held an EAS-25 position. As a result of the restructuring, he was assigned to an EAS-21 position, with indefinite saved grade and indefinite saved pay. Mr. Schall filed an appeal with the MSPB and argued that the Board should cancel his new assignment as an improper RIF action. The MSPB dismissed Mr. Schall's appeal because he was not a preference eligible employee. The Board held that the only Postal Service employees who can appeal RIF actions are preference eligibles.

Mr. Schall appealed the MSPB's decision to the United States Court of Appeals for the Federal Circuit in Washington, D.C. The Federal Circuit affirmed the Board's decision, holding that nonpreference eligible Postal Service employees cannot appeal RIF actions to the MSPB. The federal court also held that a petitioner cannot attempt to couch a "RIF action" as an "adverse

action," because an agency takes adverse actions against *employees* to discipline them, but directs RIF actions at *positions*.

This case is significant because it is the first federal court decision upholding our position that the only Postal Service employees who can appeal RIF actions to the MSPB are preference eligibles. A copy of the decision, *Richard A. Schall v. United States Postal Service and Merit Systems Protection Board*, No. 94-3644 (Federal Cir.), is attached for your review.

/s/ Mary S. Elcano

Mary S. Elcano

475 L'Enfant Plaza SW
Washington DC 20260-1100
202-268-2950
Fax. 202-258-4997

October 4,1995

Mr. Francis X. Gindhart, Clerk
United States Court of Appeals
for the Federal Circuit
The National Courts Building
717 Madison Place NW
Washington DC 20439-0001

Re: Schall v. USPS 94-3644
Memorandum for Oral Argument

Dear Sir:

This memorandum is in response to the Notice Of Submission Without Oral Argument dated 9/18/95. I was demoted from EAS-25 to EAS-21 in an adverse action and neither given protection under RIF procedures nor appeal rights to any jurisdiction including the Merit Systems Protection Board, United States Department of Justice, Office of Personnel Management, United States Postal Service nor the Executive Branch of the Federal Govemment. This assignment from the William F. Bolger Management Academy in Potomac, MD to USPS Headquarters in Washington, DC was an involuntary demotion adverse action.

As previously stated in my original brief to the court, it is not prudent of me to recreate information already provided in my individual case. However, after being informed that my level EAS-21 demotion position was being terminated, it became very clear to me that a civil service without rules was fatal. Therefore, after much deliberation, research, and soul searching, I now know that my rights as a career govemment employee of the Executive Branch in good standing had been violated.

My rights as a non-veteran federal and postal employee who is a career civil servant of the Executive Branch should have been protected by the 14th Amendment due process, the Civil Rights Acts, Title 39 which created the USPS, the Postal Employees Appeals and Reform Act of 1987, FPM Supplement 351-1 and the USPS Employee and Labor Relations Manual 365.35.

When the United States Postal Service chooses to remake itself through legislation as a Govemment-Sponsored Enterprise (GSE) much like Fannie Mae (Federal National Mortgage Association) or Freddie Mac (Federal Home Mortgage Corporation) that is fine with me. However, today it is not like either. Thus, right now, the old rules and regulations still must legally apply.

In summary, this adverse action has resulted in negative medical, personal and professional consequences. Also, I strongly believe that other related cases before the Court support my arguments. Therefore, I respectfully request fair and equitable treatment. Also, if deemed appropriate, I will gladly make myself available on November 7, 1995 to the Court in order to answer any specific questions in detail.

Thanking you in advance for your time and expertise.

Sincerely,

Richard A. Schall
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446

(301) 869-2058 Home
(202) 268-5479 Work

cc: Francis X. Gindhart
Thomas P. McLish
Calvin M. Morrow

August 3, 1995

Mr. Francis X. Gindhart, Clerk
United States Court of Appeals
for the Federal Circuit
The National Courts Building
717 Madison Place NW
Washington DC 20439-0001

Re: Schall v USPS 94-3644
Supplemental Brief to US Court of Appeals
for the Federal Circuit

Dear Sir

I was demoted from EAS-25 to EAS-21 in an adverse action and neither given protection under RIF procedures nor appeal rights to any jurisdiction including the Merit Systems Protection Board, United States Department of Justice, Office of Personnel Management, United States Postal Service nor the Executive Branch of the Federal Govemment. This assignment from the William F. Bolger Management Academy in Potomac, MD to USPS Headquarters in Washington, DC was an involuntary demotion adverse action.

As previously stated in my original brief to the court, it is not prudent of me to recreate information already provided in my individual case. However, after much deliberation, research and soul searching, I now know that my rights as a career government employee of the Executive Branch in good standing have been violated. My rights as a non-veteran federal and postal employee should have been protected by the 14th amendment, the Civil Rights Acts, the Postal Employees Appeals and Reform Act of 1987, FPM Supplement 351-1 and the USPS Employee and Labor Relations Manual 365.35.

This adverse action has resulted in negative personal and professional consequences. Other related cases before the Court support my arguments. Therefore, I respectfully request fair and equitable treatment. Also, if deemed appropriate, I will gladly make myself available to the Court in order to answer any specific questions in detail.

REJECTED. Not authorized by any rule.

FOR THE COURT

/s/ Francis X. Gindhart
8/9/95 FRANCIS X. GINDHART
Date Clerk

Thank you in advance for your time and expertise.

Sincerely,

Richard A. Schall
8101 Plum Creek DR
Gaithersburg, MD 20882-4446

(301) 869-2058 Home
(202) 268-5479 Work

July 11, 1995

Mr. Francis X. Gindhart, Clerk
United States Court of Appeals
for the Federal Circuit
The National Courts Building
717 Madison Place NW
Washington DC 204394001

Re: Schall v. USPS 94-3644
Brief to US Court of Appeals for the Federal Circuit

Dear Sir:

It is not necessary for me to restate my case. One fact is clear. I suffered an adverse action. This adverse action resulted in severe negative personal and professional consequences to my family, marriage, health, and career.

My position is that I suffered an adverse action and postal non-preference eligible employees are protected by RIF procedures. I believe that related cases support my position.

I respectfully request that any combination of the following be considered:

- Reverse the decision of the Merit Systems Protection Board.
- Reinstatement to my original EAS-25 level.
- Pay me all related fees and expenses, including but not limited to counseling,medical, postage, research, Xeroxing, time and suffering.
- Retirement with immediate pension without penalty and agreed upon severance pay.

Simple and clean, I want to move on with my life. Accordingly, I am offering fair and equitable options.

If deemed appropriate and necessary, I will respectfully attend a hearing at the Court's convenience in order to clarify any questions the Court might have concerning my case.

Thanking you in advance for your time, expertise, patience, and most importantly...wisdom!

Sincerely,

/s/ Richard A. Schall
Richard A. Schall
8101 Plum Creek DR
Gaithersburg, MD 20882-4446

(301)869-2058 Home
(202) 268-5479 Work

UNITED STATES
POSTAL SERVICE

CERTIFIED MAIL NO.
Z237640082 RETURN
RECEIPT REQUESTED

April 17, 1995

RICHARD A SCHALL
8101 PLUM CREEK DR
GAITHERSBURG, MD 20882 4446

Dear MR. SCHALL:

The Postal Service is in the process of complying with the decisions of the Merit Systems Protection Board (MSPB) that the 1992-1993 restructuring constituted a reduction-in-force (RIF).

Currently, specific RIF notices are being sent to all preference eligible employees who were placed in lower graded positions at the time of restructuring. As required by the RIF regulations, these notices specify the position and location which would have represented the "best offer" of placement for each of these preference eligible employees.

We have identified your current position as the "best offer" of another employee. If you are displaced by a preference eligible employee, you will be placed into an authorized position for which you are qualified. You will continue to receive your current saved grade and pay protection indefinitely, unless you request a change to a lower grade position or are demoted for cause.

The compliance RIF is being conducted solely for the reasons stated. It does not represent a reflection upon your performance or conduct. You will receive further information within 60 to 90 days. You need take no action at this point, but if you have

any questions concerning this matter, you should contact your District Personnel Office (field employees, including Area Office employees), Corporate Personnel Operations (Headquarters, Headquarters-related field unit employees, and PCES employees occupying PCES positions), or appropriate Human Resources Manager (Inspection Service employees).

Sincerely,

/s/ Joseph G. Hopkins
Joseph G. Hopkins, Manager
MSPB Compliance Group

September 15, 1994

United States Court of Appeals
for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439-0001

RE: MSPB Appeal of Richard A. Schall
MSPB Docket Number: DC-0351-93-0694-I-1
Request for Review by the United States Court of Appeals
for the Federal Circuit

To Whom It May Concern:

Please allow this letter to serve as my official request to the United States Court of Appeals for the Federal Circuit to review the Merit Systems Protection Board's (MSPB) decision concerning my appeal.

First, I am not a veteran. I have previously submitted to the MSPB my Appeal Form and most recent Postal Service Personnel Action Form 50, which clearly state that I am not a veteran. Furthermore, I was never appealing as a veteran. I am however appealing as a federal employee of the Executive Branch, employed by the US Postal Service (USPS), with over twenty years of continuous government service between the USPS and the US Navy. Please note, my employment with the US Navy was as a civilian. My retirement plan is the Civil Service Retirement System (CSRS) and my retirement computation date is August 17, 1974.

I am not a veterans preference eligible employee. However, I should have been afforded reduction-in-force protections by the Office of Personnel Management (OPM) when I was demoted as part of a massive USPS Reduction-In-Force (RIF). The facts are clear. I am a federal employee who suffered an adverse action. Specifically, I was demoted from a level EAS-25 Master

Instructor position in the Advanced Management Program to a level EAS-21 Operations Quality Improvement Specialist position and transferred from the Bolger Management Academy to Headquarters. While I was being downgraded and transferred others with less skills, less abilities, less education, less institutional knowledge, fewer years of government service, fewer years of management experience, shorter time in position, lower annual merit performance ratings, and fewer talents . . . were being promoted without the benefits of formal review boards. In addition, my Postal Career Executive Service (PCES) paperwork was trashed and my written agreement for PCES assignment instead of promotion to an EAS-26 was disregarded. Obviously, the above transgressions have played utter havoc with my career aspirations.

My professional judgment tells me something is grossly wrong. Regretfully, I have been unjustly treated by my employer of the last twenty years . . . the federal government. Now, I only request fair and equitable treatment. Accordingly, I am flexible and I would agree a PCES assignment or the Interagency Placement Program (IPP) or to a negotiated severance pay and an immediate pension.

As a professional manager of the federal govemment, I appreciate the time spent in reviewing my appeal. I believe an impartial and professional civil service is essential to a healthy federal govemment including the US Postal Service. Most importantly, federal laws and regulations should not be broken for short term gains, not just because the losses are ultimately substantial, but simply because it is the wrong thing to do.

Thanking you in advance for your expeditious review. It is my understanding that the MSPB will be providing you with my complete files. However, if any fees, material, or data are required on my part, please do not hesitate to contact me immediately.

Richard A. Schall
8101 Plum Creek Drive
Gaithersburg, MD 20882-4446

SSN 142-38-1468

(301) 869-2058 Home
(202) 268-5479 Work

Attachments

cc: Donald D. Anna
Mary S. Elcano
Suzanne J. Henry
Marjorie Marks
Merit Systems Protection Board
Office of the Special Counsel

SUZANNE J. HENRY VICE PRESIDENT

UNITED STATES
POSTAL SERVICE

August 29, 1994

RICHARD A. SCHALL
8101 PLUM CREEK DR
GAITHERSBURG MD 20882-4446

Dear Postal Employee:

As you probably know, the Merit Systems Protection Board has ruled that the placement of a preference-eligible postal employee in a lower-level position during the 1992-1993 restructuring was a "demotion" requiring the application of reduction-in-force procedures even if that employee received saved grade and pay. The Postal Service has begun its efforts to comply with these decisions. I know that regardless of your current employment status you have questions concerning the effects of these decisions on you and your fellow employees.

First, let me say that the Postal Service intends fully and objectively to comply with the decisions of the Merit Systems Protection Board. Please note that all preference eligible veterans assigned to lower-level positions will be accorded the reduction-in-force rights whether or not they have filed an appeal. We are assembling a task force which will plan and administer compliance. Every effort will be made to minimize personal anxiety and business disruption to enable us to devote our full time and attention to serving our customers. The Postmaster General has already decided that no employee will lose salary or grade as a result of compliance with reduction-in-force procedures and no

employee will be laid off, as would normally occur in a reduction-in-force.

Second, you need to know that this compliance effort will be very time consuming given its scope and the complexity of the issues. We all need to be patient and to ignore the inevitable rumors and idle speculation. There are individuals who will claim to have "insider" knowledge on how the reduction-in-force procedures will apply in the unique Postal Service situation. I would suggest that you be skeptical of such claims. The Postal Service has not conducted a reduction-in-force in over twenty years and many things have changed since then including our organizational structure, most of our personnel policies, our job categories and position descriptions, and our personnel data bases.

Third, the issue of veteran's preference eligibility is very important to the Postal Service's compliance effort and it is essential that personnel records on preference eligibility are correct. Attached is a fact sheet which defines "preference eligibility." If you believe that your personnel records do not accurately reflect your veterans' preference eligibility, you may wish to look at your most recent PS Form 50 to ensure that the code shown for your veterans' preference is correct. If you believe that it is incorrect, you must take your DD Form 214 and your most recent PS Form 50 to your local personnel office to verify or correct your records.

We all have a challenging year ahead of us. I am asking all of you to allow the compliance process to proceed and to focus your efforts on keeping this company a world-class Postal Service.

Sincerely,

/s/ Suzanne J. Henry
Suzanne J. Henry

Attachment

475 L'Enfant Plaza SW
WASHINGTON DC 20260-4200
202 268-3783
FAX. 202-268-3074

October 6, 1993

Elizabeth B. Bogle
Administrative Judge
Number Two Skyline Place
Suite 1109
5203 Leesburg Pike
Falls Church, VA 22041-3473

Re: MSPB Appeal of Richard A. Schall
MSPB Docket No. DC-0351-93-0694-I-1

Dear Judge Bogle:

I have received the USPS initial response to my appeal. Also, I have requested a hearing and my action is within the Board's jurisdiction. However, at this time, I wish to settle my appeal. I desire to contact directly Deputy Chief Field Counsel Anna. Please notify me if this action is deemed appropriate to you. Thank you in advance for your patience and guidance in resolving this matter.

Sincerely,

Richard A. Schall
8101 Plum Creek Drive
Gaithersburg, Md 20882-4446
(301) 869-2058 Home
(202) 268-5479 Work

Reduction In Force

Office of Personnel Management
Federal Personnel Manual System

September 1989

Federal Times September 19, 1994

RIF Rights South For Non-Vets

By Ed Winsten
Federal Times Staff Writer

Top US. Postal Service officials will meet with a veterans group claiming downgraded non-veterans were not treated fairly.

The meeting is scheduled for Sept. 16. It follows a Sept. 2 letter from Ronald Drach of the Disabled American Veterans criticizing USPS for not including non-veterans in plans to reconsider downgrades conducted during the reorganization.

"While we have objected to the failure of the USPS to provide veterans the preference in a RIF that they are accorded in law, it has always been our position that *all* [emphasis in original] USPS employees should enjoy the protections accorded federal employees in a RIF," wrote Drach, the group's national employment director.

Earlier this summer, USPS gave up a court fight and told downgraded veterans they would get RIF protections in their attempts to get back their previous jobs. But to this point, USPS has not mentioned whether downgraded non-veterans would be considered. According to USPS, about 7,100 people were downgraded in 1992. The 2,800 preference-eligible veterans have received notices telling them of the decision and advising them to have proof of military service.

But the 4,300 non-preference eligibles have received no correspondence.

Len Gilmer, DAV's assistant employment director, said the organization was wary the postal service would treat non-veterans unfairly. "We don't want a RIF used as a bludgeon and veterans used as a scapegoat," said Gilmer.

In letters to the vets, USPS stressed it will comply with rulings by the Merit Systems Protection Board, which has ruled in more than 100 cases that the reorganization was a RIF. But the board also has repeatedly ruled that non-veterans cannot appeal a downgrade in a RIF.

Non-veterans can appeal to federal court, but without a favorable court decision, they lack clout.